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Mark B. Wilson
ARNOLD, WHITE & DURKEE
P.O. BOX 4433
Houston, Texas 77210-4433

In re Application of	:	
PARMACEK et al.	:	
U.S. Application No. 09/381,750	:	DECISION ON PETITION
PCT No.: PCT/US97/16204	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 29 August 1997	:	AND REQUEST FOR
Priority Date: 07 October 1996	:	REFUND
Attorney Docket No. ARCD: 333/WIM	:	
For: PROMOTER FOR SMOOTH MUSCLE	:	
CELL EXPRESSION	:	

This is a decision on applicant's "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER CFR 1.137(b)" and "REQUEST FOR REFUND OF FEES" filed 22 September 1999 in the above-captioned application. The required petition fee of \$1210.00 (37 CFR 1.17(m)) has been submitted.

BACKGROUND

On 29 August 1997, applicant filed international application PCT/US97/16204 which claimed a priority date of 07 October 1996 and which designated the United States. A proper Demand was filed with for International Preliminary Examination prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 07 April 1999. The application was abandoned on 08 April 1999.

On 22 September 1999, applicant filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied, inter alia, by: the basic national fee; an international search report; present petition seeking revival under 37 CFR 1.137(b) with the appropriate fee; and a request for refund of fees.

DISCUSSION

I. Petition to Revive Under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the

grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

With regard to Item (1), the proper response was the submission of the payment of the basic national fee of \$970.00.

As to Item (2), the appropriate petition fee of \$1210.00 as required by 37 CFR 1.17(m) was submitted.

With regard to Item (3), applicant's statement that "entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

II. Request for Refund under 37 CFR 1.26

Applicant states in the "Request for Refund of Fees" that "[o]n September 9, 1999, a Petition for Revival of International Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) as well as a Transmittal Letter to the U.S. Designated/Elected Office were filed for the above referenced application. Inadvertently, an incorrect International Application Number of PCT/US97/62101 was listed instead of the correct International Application Number of PCT/US97/6204 on both the Petition and the Transmittal Letter." These papers were stamped with serial number 09/380,928.

The "Request for Refund of Fees" filed 22 September 1999 is being placed in Application No. 09/380,928 and a decision will be rendered in due course.

CONCLUSION

All of the requirements of 37 CFR 1.137(b) have been met and applicant's petition to revive is **GRANTED**.

This application is being returned to the DO/EO/US for processing in accordance with this decision, that is, for issuance of a Notification of Missing Requirements (Form

PCT/DO/EO/905), to inform applicant that an oath or declaration of the inventors in compliance with 37 CFR 1.497 must be submitted.



Leonard Smith
Legal Examiner
PCT Legal Office



Anthony Smith
Petitions Attorney
PCT Legal Office
Tel: 703-308-6314
Facsimile: 703-308-6459